

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 24, 2007

DONNA ARNOLD v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Johnson County
No. 4417 Robert E. Cupp, Judge

No. E2006-00161-CCA-R3-PC - Filed October 8, 2007

The petitioner, Donna Arnold, appeals from the post-conviction court's denial of post-conviction relief. On appeal, she contends that she entered into an unknowing and involuntary guilty plea. Following our review of the record and the parties' briefs, we affirm the judgment of the post-conviction court denying post-conviction relief.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

C. Brad Sproles, Kingsport, Tennessee, for the appellant, Donna Arnold.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; Joe Crumley, District Attorney General; and Tony Clark, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The record reflects that the petitioner shot her husband because he was engaged in an extramarital relationship with another woman and because of other marital strife. In September 2000, she was charged with first degree murder and faced the possibility of life imprisonment without parole. Approximately three years later, by agreement with the state, the petitioner pled guilty to second degree murder and received a sentence of twenty-five years to be served at 100%. Subsequently, the petitioner filed a timely pro se petition for post-conviction relief. Thereafter, post-conviction counsel was appointed, an amended petition was filed, and an evidentiary hearing was held.

At the hearing, the petitioner testified that in June of 2000, she was arrested and placed in jail for the murder of her husband.¹ Prior to her arrest, the petitioner had never been charged or convicted of any criminal offense of any magnitude. Rather, she attempted to live her life and raise her children according to moral and lawful values. After being charged with first degree murder, she was confined to jail awaiting trial. Although the petitioner could not recall the exact date, she asserted that for two and a half years she was led to believe that she would be a “30% Offender” if she was convicted of second degree murder.

The petitioner testified that five or six days before a hearing on her motion to suppress, trial counsel visited her at jail and told her that the state had made a plea offer of twenty-five years at 100% for second degree murder. The petitioner stated that upon hearing the offer she was overwhelmed and distraught and “tore all to pieces” over this information. The petitioner also recounted that she was intimidated by her trial counsel and co-counsel. She asserted that she felt pressure to take the plea offer in order to make her attorneys happy. She also noted that the decision to take the plea offer “frightened [her] very badly.” The petitioner recalled that she had a second meeting with her attorneys and at this meeting the plea offer, including release eligibility, was discussed in detail. However, the petitioner asserted that she was so set on 30% release eligibility that she did not really comprehend the significance of the 100% sentence with a 15% reduction for good behavior. The petitioner also noted that she felt pressure because she was told that the state would not make another plea offer in the event she refused to accept the initial offer. The petitioner submitted that with 30% release eligibility she would only have to serve about six and a half years of her twenty-five-year sentence.

The petitioner testified that on July 11, 2003, six days after the plea offer was presented to her, she pled guilty to second degree murder in open court. The petitioner asserted that she was very frightened and came into the courtroom like a zombie. She explained:

[L]ike I had said just a few moment ago how I try to please other people all of the time. And I was in here and I had [trial counsel] and [co-counsel] both on each side of me, and the questions were coming from Judge Cupp right and left. And it was just like a motion I was going through, yes, sir, or no, sir. And you all know the questions, they’re there in the transcript. . . . I wanted to say something about the 85% and the 30%, but, I was really frightened to stand up to my attorneys. And I . . . didn’t want to make a scene in the courtroom. So, I just went ahead and - - and said, yes, sir, when Judge Cupp elaborated on that question.

The petitioner then stated she was not strong enough to tell the court that she did not understand the release eligibility details of her guilty plea.

¹ We include only testimony relevant to the petitioner’s sole issue on appeal – whether or not she entered into a voluntary, knowing, and intelligent guilty plea.

On cross-examination, the petitioner acknowledged that she was informed of the fact that she was charged with first degree murder and was facing life imprisonment without the possibility of parole. She also acknowledged that at the guilty plea hearing the trial court explained the details of her guilty plea and sentence including release eligibility. The petitioner also acknowledged that she signed the plea agreement, and the trial court questioned her about her acceptance of the agreement at the plea hearing. The petitioner further acknowledged that she knew for a period of six days prior to her guilty plea that the state's plea offer did not entail 30% release eligibility but was 100% service of sentence with the possibility of 15% credit for good behavior. However, the petitioner insisted that she thought the 100% could be reduced to a lesser 30%.

Trial counsel testified as to the details of her representation of the petitioner. Trial counsel stated that she sent numerous letters to the petitioner regarding her case and spoke with the petitioner approximately twenty-seven times during the course of her representation. Trial counsel also noted that she provided the petitioner with all documentation pertaining to her case. According to trial counsel, the petitioner was charged with first degree murder and the state had filed a notice seeking a life sentence without the possibility of parole. When discussing the possibility of a plea bargain, the district attorney informed her that the petitioner's case was the strongest case of premeditation he had ever seen. The petitioner was made aware of this notice and understood the implications of this sentence.

Trial counsel testified that on July 3, 2003, the district attorney offered a plea bargain where the petitioner could plead guilty to second degree murder and serve a sentence of twenty-five years at 100%. As a result, trial counsel visited the petitioner in jail on July 6, 2003, and conveyed the state's plea offer. Trial counsel recalled that she discussed all the sentencing possibilities for each grade of homicide, and she gave the petitioner a copy of the sentencing ranges for her to review. Trial counsel further recalled that prior to July 3, the state had not made a plea offer except to indicate that it might allow the petitioner to plead guilty to first degree murder and receive a life sentence.

Trial counsel testified that she thoroughly discussed the state's plea offer with the petitioner. She explained to the petitioner that the plea offer meant that she was going to receive a sentence of twenty-five years at 100% minus a possible 15% credit. Trial counsel also pulled the sentencing guidelines for homicides from the criminal justice handbook to help the petitioner understand what sentence she would serve if she pled guilty to second degree murder. Trial counsel reiterated that prior to the state's offer there had been no previous offers, therefore, she had no reason to discuss release eligibility with the petitioner prior to the state's offer. Trial counsel stated that she was prepared to go to trial and would have done so if the petitioner had not accepted the state's plea offer.

Co-counsel testified that she was good friends with trial counsel and had offered assistance on the petitioner's case. Co-counsel stated that she was present during some of the conversations with the petitioner before the petitioner pled guilty. Co-counsel recalled that on July 8, 2003, she accompanied trial counsel to the local jail where they discussed the state's plea offer. She recalled that the petitioner was fully informed she would serve 100% of her twenty-five-year sentence with

the possibility of 15% credit if she accepted the state's offer. Co-counsel stated that there was no discussion of a 30% offer. Co-counsel stated that trial counsel was prepared to go to trial and had clearly explained to the petitioner her options and that the choice of pleading guilty or going to trial was the petitioner's choice. According to co-counsel, trial counsel diligently represented the petitioner and her representation went well-beyond what other attorneys would have done.

Following the evidentiary hearing, the post-conviction court entered an order denying post-conviction relief. Among other things, the court found that the plea hearing transcript and evidentiary hearing established without a doubt that the petitioner's guilty plea was knowingly and voluntarily entered.

As her sole issue on appeal, the petitioner contends that the post-conviction court erred in finding that she had entered a knowing and voluntary guilty plea. In order for a petitioner to succeed on a post-conviction claim, the petitioner must prove the allegations set forth in the petition by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). On appeal, this court is required to affirm the post-conviction court's findings unless the petitioner proves that the evidence in the appellate record preponderates against those findings. *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). Our review of the post-conviction court's factual findings, such as findings concerning the credibility of witnesses and the weight and value given their testimony, is de novo with a presumption that the findings are correct. *See id.* Our review of the post-conviction court's legal conclusions and application of law to facts is de novo without a presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 457-58 (Tenn. 2001).

A petitioner may successfully contest a conviction when his or her guilty plea is unknowing or involuntary. *See* Tenn. Code Ann. § 40-30-103; *Boykin v. Alabama*, 395 U.S. 238 (1969); *State v. Mackey*, 553 S.W.2d 337 (Tenn. 1977). A plea is not voluntary or knowing if it results from ignorance, misunderstanding, coercion, inducements or threats. *Blankenship v. State*, 858 S.W.2d 897, 904 (Tenn. 1993). When determining the knowing and voluntary nature of the guilty plea, the court must look to various circumstantial factors including:

the relative intelligence of the defendant; the degree of his familiarity with criminal proceedings; whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from a jury trial.

Blankenship, 858 S.W.2d at 904. The standard is and remains "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970); *see also State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999). A petitioner's solemn declaration in open court that his or her plea is knowing and voluntary creates a formidable barrier in any subsequent collateral proceeding because these declarations "carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74 (1977).

In the instant case, the record fully supports the post-conviction court's findings that the petitioner's guilty plea was knowing and voluntary. The transcript of the plea submission hearing reflects that the trial court extensively questioned the petitioner before accepting her guilty plea. In response to these questions, the petitioner informed the court *inter alia* that she was satisfied with counsel's representation and understood the terms of the plea agreement including the fact that she would serve 100% of her twenty-five-year sentence. The petitioner also informed the court that she understood the ramifications of pleading guilty versus going to trial. It is also clear from the record that the petitioner was originally charged with first degree murder and faced a life sentence without the possibility of parole. Additionally, the record reflects that both trial counsel and the trial court explained to the petitioner the terms of the guilty plea and corresponding sentence including the fact that she was receiving a sentence of twenty-five years to be served at 100%. Therefore, in summation, the record clearly indicates that the petitioner was relatively intelligent, was represented by competent counsel, was advised of the charges against her and the possible punishments involved, was informed of her options, and chose to avoid a greater penalty by pleading guilty to second degree murder. Consequently, the petitioner is not entitled to relief.

Based on the appellate record and the foregoing reasoning, we affirm the judgment of the post-conviction court.

J.C. McLIN, JUDGE